



ENERGY AND ENVIRONMENT CABINET

**DEPARTMENT FOR ENVIRONMENTAL PROTECTION
DIVISION OF WASTE MANAGEMENT
200 FAIR OAKS LANE, 2ND FLOOR
FRANKFORT, KY 40601
TELEPHONE NUMBER (502) 564-6716**

Escrow Agreement for Corrective Action Form DEP 6053-I (11/08)

GENERAL INFORMATION

1. **ASSISTANCE** – Questions regarding this form may be directed in writing to the Division of Waste Management, Solid Waste Branch at the address listed above, or by calling (502) 564-6716.
2. **SUBMISSION** – Please type or print legibly in permanent ink. Submit the original of the completed form to the Division of Waste Management at the address listed above. The document must be free of errors.

THIS AGREEMENT, made, executed, and delivered this the _____ day of _____, 20____, by and between _____, as Permittee, and _____, as Escrow Agent, and the Kentucky Energy and Environment Cabinet (hereinafter Cabinet).

WITNESSETH:

WHEREAS, Permittee has a permit to construct and/or operate a solid waste site or facility in the Commonwealth of Kentucky; and

WHEREAS, the laws of the Commonwealth require that a bond be posted to guarantee performance of facility and the groundwater corrective action plan in accordance with the requirements in KRS Chapter 224 and the regulations promulgated pursuant thereto, and

WHEREAS, the Permittee desires to meet the bonding requirements for the groundwater corrective action plan for this solid waste site or facility in the Commonwealth of Kentucky by executing such bond and posting surety in the sum of _____ dollars (\$ _____) with the Cabinet to be held by Escrow Agent, which sum is hereby acknowledged by the Cabinet to be sufficient and acceptable for the permit application number _____, relating to groundwater corrective action plan approved on _____ (date) for this solid waste disposal facility located at _____ in _____ County, Kentucky; and

WHEREAS, such sum shall be placed in the safe custody of the Escrow Agent and the Agent is directed to purchase certificates of deposit of the _____ (name of financial institution), which certificates of deposit are hereinafter referred to as The Certificates, and are more fully described as follows, to wit:

CERTIFICATE NO.	DATE OF ISSUANCE	PRINCIPAL	AMOUNT
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AND WHEREAS, this Agreement is a supplement to the bond filed by the Permittee with permit number for a permit to construct and/or operate a solid waste site or facility.

NOW, THEREFORE, in consideration of the premises set forth herein, the parties hereto mutually agree as follows:

1. The Escrow Agent hereby acknowledges receipt of The Certificates above listed, to be safely and securely kept for the stated purposes of this Agreement and subject to the terms and conditions herein, and hereby binds itself to perform completely under the terms of this Agreement and to dispose of The Certificates or the proceeds therefrom only as provided herein. The Escrow Agent further agrees to exercise due care in the safekeeping and delivery of The Certificates;
2. The parties agree The Certificates or any subsequent Certificates are and shall be made payable in favor of the Escrow Agent only and the parties further agree that until such time as the Cabinet orders that the bond for the groundwater corrective action plan be forfeited or until such time as the bond is released, all interest accruing on The Certificates shall be disposed of in accordance with paragraphs 4 and 5 of this Agreement;
3. The parties agree that the Escrow Agent is hereby authorized and directed to insure that The Certificates remain in full force during the term of this Agreement and the Escrow Agent may, upon notice to all parties, and upon the maturity of The Certificates, issue new Certificates of face value equal to the outstanding amount of the bond. In the event of such issuance, the new Certificates shall replace The Certificates herein for all purposes and shall be subject to the conditions of this Agreement;

4. Any interest accruing on The Certificates shall be held by the Escrow Agent until such time as the bond has been released or forfeited or The Certificates have matured and been replaced by new Certificates. No interest shall be paid to the Applicant on any Certificate until such time as the Certificate matures or a full release has been obtained from the Cabinet or until the bond has been forfeited and any penalty resulting from the cashing of the Certificate has been satisfied;
5. In the event of forfeiture of the bond posted herein and upon the Cabinet's written notice of such forfeiture to the Escrow Agent, the Escrow Agent shall promptly cash The Certificates and forward to the Cabinet a Cashier's Check in the outstanding amount of the bond, pay any penalties which result from the cashing of The Certificates from the interest accrued thereon, and remit any remaining interest and principal to the Permittee;
6. The parties agree that neither the Escrow Agent nor the Cabinet shall be liable for any loss of interest which may result to the Permittee as a result of an Order of Forfeiture;
7. The Escrow Agent shall not be liable for inquiring whether there has been performance by the Applicant or to see the application of any monies paid on the instruction of the Cabinet and in such matters the Escrow Agent may rely upon the instructions of the Cabinet executed by the Secretary of the Cabinet, his designee, or his successor or the successor agency as provided by law. The Escrow Agent need not verify the apparent authority of an agent of the Cabinet in carrying out the Cabinet's instructions. Nothing herein shall prevent the Commonwealth from designating a person authorized to act for it in any other lawful manner;
8. That for value received the Permittee does hereby assign, transfer, and set over to the Commonwealth of Kentucky all right, title, and interest which the Permittee may have in The Certificates. The parties agree that The Certificates are being held solely for the benefit of the Commonwealth of Kentucky and that the Permittee has relinquished all right, title, and interest to The Certificates as provided herein. The Permittee may not

pledge or encumber in any manner The Certificates or any renewal certificates, or the interest due thereon, so long as the same are subject to the conditions of the bond herein;

9. The Cabinet agrees that upon completion of the requirements of the groundwater corrective action plan in accordance with KRS Chapter 224 and 401 KAR Chapters 47 and 48 (specifically 401 KAR 48:300) at the solid waste site or facility and upon the Cabinet's inspection and approval of the same, the Cabinet shall release the bond herein and promptly notify the Escrow Agent and the Permittee of such release.

10. It is agreed, as between the parties, that in the event the Escrow Agent closes or goes into receivership, any Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation, or National Credit Union Administration insurance proceeds paid on, to, or as a result of The Certificates, shall first be applied to cover The Certificates;

11. The parties agree that the Escrow Agent shall be the Cabinet's agent for holding The Certificates for the purpose of perfecting the Cabinet's security interest in those Certificates under KRS Chapter 355.

12. This agreement shall be binding upon the successors and assigns of the respective parties; and

13. Upon receipt by the Escrow Agent of written notification by the Cabinet of the forfeiture or the release of the bond herein, and disbursement pursuant to this agreement by the Escrow Agent of written notification by the Cabinet of the forfeiture or the release of the bond herein, and disbursement pursuant to this agreement by the Escrow Agent of The Certificates or the proceeds therefrom and any interest accrued thereon, the Escrow Agent shall be discharged of any and all duties and liabilities arising out of or as a result of this Agreement.

This Escrow Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Kentucky. Litigation concerning this Escrow Agreement shall be taken to the Franklin Circuit Court, Commonwealth of Kentucky.

SIGNED, the day and date first above written by the appropriately authorized officers.

Applicant Signature: _____

Type or print name:

Official Position:

Date: - -

Escrow Agent Signature: _____

Type or print name:

Official Position:

Date: - -